REMARKS

Reconsideration of the present application is respectfully requested.

Summary of Office Action

Claims 1-3, 5, 6, 8-12 and 16-26 are rejected under 35 USC 102(e) as being anticipated by Wen et al., U.S. 7,333,431 B2("Wen"). Claims 3, 11 and 24 are rejected under 35 USC 103(a) as being unpatentable over Wen and Chen et al., U.S. 6,680,976 B1 ("Chen").

Summary of Examiner Interview

A telephonic interview was conducted between the Examiner and Applicants' representative (the undersigned) on 4/05/2010. Claims 1-3, 5, 6, 8-12, and 16-26 were discussed relative to the rejection under 35 USC 102(e). The substance of the discussion is substantially reflected in the remarks below. The Examiner indicated that Applicants' arguments overcome the rejection under 35 USC 102(e). An agreement was reached that the Examiner would withdraw the rejection.

Discussion of Rejections

Response to 102 Rejection

The Office rejected Claims 1-3, 5, 6, 8-12 and 16-26 under 35 U.S.C. § 102(e) as being allegedly anticipated by Wen et al., U.S. 7,333,431 B2("Wen").

Independent claims 1, 9, 16 and 22

Wen does not disclose or suggest the invention as recited in claims 1, 9, 16 and 22. Independent claim 16 states, in relevant part, "receiving ... a first packet of data

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representing a particular portion of a media stream and including a specified packet delivery time."

Wen relates to overcoming congestion conditions in a communication network by modifying a TCP window of a traffic stream and modulating the inter-packet bandwidth of packets of the traffic stream. *See* Abstract. Wen is distinguishable from the claimed invention because, inter alia, it does not teach <u>a packet including a packet delivery time</u> as recited by Applicants' claim 16. Wen teaches modifying an initial congestion window of a <u>standardized</u> TCP/IP stream of packets (i.e. the packets of the stream do *not* include a specified packet delivery time). *See* Column 8 lines 33-46. Therefore, for at least this reason, Applicants traverse this rejection.

Applicants' independent claim 16 further states, in relevant part, "modifying the specified packet delivery time … by adding a [pseudo-randomly selected first delay value] to the specified packet delivery time." As discussed above, Wen does not teach or even suggest a packet including a delivery time, therefore, Wen cannot teach adding any value to a packet delivery time.

Wen does teach a "relaxation time" that is "empirically" set over a range of network conditions. *See* Column 5, lines 35-42. However, the "relaxation time" does not modify a value of a packet's deliver time (see above); furthermore, this "relaxation time" is <u>not "pseudo-randomly selected"</u> as recited in Applicants' claim 16. Wen teaches that the relaxation time is empirically set based on existing network conditions; therefore, the relaxation time is based on observation of actual, experiential data, *not* a random or even a pseudo-random selection. *See* id. Even if there is a random element in the observed data, that is not the same as, or any suggestion of, selecting the actual delay value pseudo-randomly.

Therefore, for at least these reasons, the Applicants respectfully submit that Wen is clearly distinguishable from independent claim 16 and request Examiner to withdraw the §102 rejection to the above mentioned claims.

Independent claims 1, 9, and 22 recite, inter alia, the patentable features discussed in regards to claim 16. Accordingly, claims 1, 9, and 22 are also patentable for at least the same reasons discussed below for claim 16.

Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Response to 103 Rejection

The Office rejected Claims 3, 11 and 24 are rejected under 35 USC 103(a) as being unpatentable over Wen and Chen et al., U.S. 6,680,976 B1 ("Chen").

As discussed above, Wen does not teach all the elements of independent claims 1, 9, 16 and 22. As such, the cited combination of Wen and Chen does not disclose the claimed invention or render it obvious.

CONCLUSION

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If any fee is due with this submission, the Commissioner is authorized to charge Deposit Account No. 50-2207.

Dated: _____ *4 - 9 - 10* _____

Respectfully submitted,

By: _____ *Erik C. Smith* _____

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